



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNR, MNDC, OLC, RP, RR, FF

Introduction

This matter dealt with an application by the Tenant for more time to make the application, to Cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, monetary compensation for damage or loss, and Order to have the Landlord comply with the Act, make repairs to the rental property, allow the tenant reduced rent for repairs and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 17, 2010. Based on the Evidence of the Tenant, I find the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord present.

Issues(s) to be Decided

1. Is the Tenant entitled to a cancelation of the Landlord's Notice to End Tenancy?
2. Is the Landlord entitled to End the Tenancy and if so when?
3. Is the Tenant entitled to more time to make the application?
4. Is the Tenant entitled to monetary compensation and if so how much?

Background and Evidence

The Landlord said he served the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 9, 2010, by personal delivery on August 9, 2010. The amount on the Notice was \$2,500.00 for unpaid rent; \$1,000.00 for July, 2010, \$1,000.00 for August and \$500.00 for the security deposit.

The Tenant said he understood the rent was \$800.00 per month and the security deposit was \$300.00. He said that he paid \$2,400.00 on August 10, 2010 and \$800.00 on August 25, 2010.

The Tenant continued to say that he signed a blank tenancy agreement that the Landlord said he would complete at a later date and return it to him. A copy of the tenancy agreement was submitted with the evidence. It is not completed.

During the hearing both the Tenant and the Landlord made references to the rental of a second unit described as #2. The Tenant said he rented unit #2 first and then moved to the unit #1, which is on the application, on or about July 15, 2010. He said he only rented one unit at a time from the Landlord and the landlord was aware of his move to unit #1. The Landlord said the Tenant moved to unit #1 and continued to rent unit #2 for a driver for his business. The landlord said the rental amount for each unit was \$1,000.00 and security deposits were \$500.00 for each unit. The Tenant said he understood the rent to be \$800.00 and a security deposit of \$300.00. The Tenant said he paid \$2,400.00 for on August 10, 2010; \$800.00 for rent for June, 2010, \$800.00 for rent for July, 2010 and \$800.00 for rent for August 2010. In addition he said he paid \$800.00 for rent on August 25, 2010, for September, 2010. The Tenant continued to say that the security deposit was written into the incomplete tenancy agreement that he signed in the amount of \$300.00. The Landlord said he agreed that the security deposit is \$300.00, the amount in the tenancy agreement. The Tenant finished by saying that he has paid all the rent due.

The Landlord said the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was for \$1,000.00 rent for July, 2010, \$1,000.00 rent for August, 2010 and \$500.00 for the unpaid security deposit for unit #1. As well, the Landlord said the Tenant's rent for unit #2 is \$4,000.00 and \$500.00 for the security deposit. The Landlord did acknowledge the Tenant's payments of \$2,400.00 August 10, 2010 and \$800.00 August 25, 2010. The Landlord said the Tenant owes him \$3,300.00. He calculated this as follows:

Amount on 10 Day Notice to End Tenancy	\$2,500.00	
Amount owing on second rental unit #2	\$4,500.00	
Subtotal		\$7,000.00
Less		
Payment received August 10, 2010	\$2,400.00	
Payment received August 25, 2010-09-18	\$ 800.00	
Withdrawn \$500.00 security deposit unit #2	\$ 500.00	
Subtotal		<u>\$3,700.00</u>
Total		<u>\$3,300.00</u>

The Landlord submitted a letter from a witness (S.H.) in which she has written that she told the Tenant that the amount of rent for each unit was \$1,000.00.

Analysis

Section 46 (1) states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The Notice to end tenancy for unpaid rent or utilities is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. It does not include unpaid security deposits. Unpaid security deposits are included in a 1 Month Notice to End Tenancy for Cause section 47 (1) of the Act. I find that the amount on the 10 Day Notice to End Tenancy for unpaid Rent or Utilities should be \$2,000.00. Given that Tenant paid \$2,400.00 on August 10, 2010, which is within the 5 days allowed to to pay the rent after being served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on August 9, 2010, the Tenant has met his obligation to the Landlord with respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 13 (1) states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;

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- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

There is contradictory evidence and oral testimony regarding the amount of the rent and whether the Tenant rented Unit #1 and #2 simultaneously or if the Tenant

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only rented one Unit at a time. The burden of proof is on the Landlord to establish his claim as the Landlord issued the Notice to End Tenancy. I find that in the absence of a tenancy agreement, the Landlord has not established proof of his claim that rent was \$1,000.00 per month. Therefore, I find the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is granted as the Tenant has paid the rent of \$800.00 per month which was in arrears within the time limits as stated in the Act.

As well the Tenant's application for the Landlord to Comply with the Act is granted and I find that the Landlord must comply with section 13 (1) and provide a tenancy agreement if the tenancy continues.

The Tenant's claim for more time to make the application was withdrawn at the hearing.

The Tenant's claim for compensation for damage or loss, make repairs and reduce the rent for repairs are dismissed as the Tenant said he did not spend any money to repair the rental unit.

As the Tenant has been successful with his application he is entitled to recover the \$50.00 filing fee from the Landlord. I Order that the Tenant may deduct the \$50.00 filing fee from future rent paid or other payments made to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.
